

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CORNELL DAVIS,

Plaintiff,

v.

J. PENA, et al.,

Defendants.

Case No. 1:22-cv-00114-DAD-BAK (SAB) (PC)

FINDINGS AND RECOMMENDATIONS TO
DISMISS ACTION FOR FAILURE TO
COMPLY WITH A COURT ORDER,
FAILURE TO COMPLY WITH LOCAL
RULES, AND FAILURE TO PROSECUTE

(Doc. No. 11)

FOURTEEN (14) DAY DEADLINE

Plaintiff Cornell Davis is a state prisoner proceeding *pro se* in this civil rights action filed under 42 U.S.C. § 1983. Plaintiff initiated this action by filing a complaint on January 27, 2022, along with a motion to proceed *in forma pauperis*. (ECF Nos. 1, 2.)

I. PROCEDURAL HISTORY

On February 2, 2022, the assigned magistrate judge entered findings and recommendations for the Court to deny Plaintiff's motion to proceed *in forma pauperis* and order Plaintiff to pay the \$402 filing fee in order to proceed with this action. (ECF No. 9.) The magistrate judge found that the activity in Plaintiff's inmate trust account from August 1, 2021, to January 26, 2022, reflected that Plaintiff had an available credit of \$764.60 in his account at

1 Kern Valley State Prison. Plaintiff's trust account also carried a balance in excess of \$2,000.00
2 in the prior three months. The activity in Plaintiff's account reflected that he had the resources
3 to pay the \$402.00 filing fee for this action.

4 Plaintiff filed a motion for recommendations to grant his motion to proceed *in forma*
5 *pauperis*. (ECF No. 10.) Plaintiff stated that the money in excess of \$2,000.00 was necessary
6 to show his fitness as a parent in a dispute over custody of his daughter. (*Id.*)

7 The Court construed this motion as objections to the findings and recommendations.
8 (*See* ECF No. 11.) After conducting a *de novo* review of the case, the Court concluded that,
9 notwithstanding Plaintiff's intentions for the funds, Plaintiff's trust account reflected that he is
10 not indigent and had the ability to pay the \$402.00 filing and administrative fees. Accordingly,
11 the Court adopted the findings and recommendations issued on February 2, 2022, and denied
12 Plaintiff's application to proceed *in forma pauperis*. (*Id.*) The Court ordered Plaintiff to pay
13 \$402.00 within forty-five days to proceed with this action and cautioned that "[f]ailure to pay
14 the filing fee within the allotted time will result in dismissal of this action." (*Id.*) The Order
15 was served on Plaintiff on March 7, 2022.

16 More than forty-five days have passed, and Plaintiff has failed to comply with this Order
17 and prosecute this case by paying the \$402.00 filing fee.¹

18 II. DISCUSSION

19 Local Rule 110, corresponding with Federal Rule of Civil Procedure 11, provides:
20 "Failure of counsel or of a party to comply with . . . any order of the Court may be grounds for
21 the imposition by the Court of any and all sanctions . . . within the inherent power of the Court."
22 L.R. 110. "District courts have inherent power to control their dockets," and in exercising that
23 power, may impose sanctions, including dismissal of an action. *Thompson v. Hous. Auth., City*
24 *of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a
25 party's failure to prosecute an action, obey a court order, or comply with local rules. *See, e.g.,*

26
27 ¹ Consistent with 28 U.S.C. § 1914, Local Rule 121(c) provides: "Except as required by law, or as otherwise directed
28 by the Court, the Clerk shall not file any paper, issue any process, or render any other service for which a fee is
prescribed by statute or by the Judicial Conference of the United States unless the fee is prepaid."

1 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply
2 with a court order to amend a complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–31
3 (9th Cir. 1987) (dismissal for failure to comply with a court order); *Henderson v. Duncan*, 779
4 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local
5 rules).

6 Under Local Rule 183, a *pro se* Plaintiff is bound by the Federal Rules of Civil
7 Procedure, the Local Rules, and all other applicable laws. L.R. 183(a). The Local Rules apply
8 to *pro se* parties and are held to the obligations placed on counsel. (*Id.*) “Failure to comply
9 therewith may be ground for dismissal, judgment by default, or any other sanction appropriate
10 under these Rules.” (*Id.*)

11 Here, the Court gave Plaintiff a clear warning that “[f]ailure to pay the filing fee within
12 the allotted time will result in dismissal of this action.” (ECF No. 11.) Despite this warning,
13 Plaintiff has failed to comply with the Court’s order requiring Plaintiff to pay the \$402.00 filing
14 fee within forty-five days. By failing to follow the Court’s order, Plaintiff also failed to comply
15 with the Local Rules. Moreover, the failure of Plaintiff to pay the filing fee to advance this case
16 warrants dismissal for failure to prosecute.

17 III. CONCLUSION

18 Accordingly, IT IS HEREBY RECOMMENDED that:

- 19 1. The Court dismiss this action without prejudice for Plaintiff’s failure to comply
20 with a court order, failure to comply with the Local Rules, and failure to
21 prosecute; and
- 22 2. Direct the Clerk of Court to close the case.

23 These Findings and Recommendations will be submitted to the United States District
24 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). **Within**
25 **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may
26 file written objections with the Court. The document should be captioned, “Objections to
27 Magistrate Judge's Findings and Recommendations.” Plaintiff is advised that the failure to file
28 objections within the specified time may result in the waiver of the “right to challenge the

magistrate's factual findings" on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: May 4, 2022


UNITED STATES MAGISTRATE JUDGE